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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 **FEDERAL COMMUNICATIONS COMMISSION**
OFFICE OF THE SECRETARY

MAR - 8 1994

IN THE MATTER OF:

MM DOCKET NO. 93-176

RICHARD RICHARDS

Sierra Vista, Arizona

DATE OF HEARING: February 23, 1994

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In the matter of:

RICHARD RICHARDS INC.

Sierra Vista, Arizona

MM Docket No. 93-176

The above-entitled matter came on for hearing pursuant to Notice before Judge Richard L. Sipple, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., 20554, in Courtroom 4, on Wednesday, February 23, 1994, at 10:00 a.m.

APPEARANCES:

On behalf of Richard Richards:

GERALD P. McCARTIN, Esquire
THOMAS SCHATTENFIELD, Esquire
Arent, Fox, Kintner, Plotkin, and Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

On behalf of Mass Media Bureau:

ROBERT ZAUNER, Esquire
Mass Media Bureau
2025 M Street
Suite #7212
Washington, D.C. 20554

I N D E X

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Opening Statement By Judge Sipple

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E X H I B I T S

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Hearing Began: 10:00 a.m.

Hearing Ended: 12:20 p.m.

P R O C E E D I N G S

JUDGE SIPPLE: Let the record reflect that all counsel who were present when we -- when we recessed on the 7th of December are present today and, according to my schedule, there were basic -- there were three items of business that we want to clear up today.

First would be the unqualified consideration as evidence of the Bureau's Exhibits 6, 7, and 8. Those exhibits have been received in evidence and my review of the transcript shows there were some -- my main concern was that Mr. Schattenfield or Mr. McCartin had not seen the exhibits before as exhibits and that there might be some question with respect to them having a basis to move to strike those exhibits, and I have received no motions. So, except for impeachment purposes -- which I precluded those exhibits and, and Mr. Zauner represented that he was not offering them for impeachment purposes. So, except for impeachment purposes, Exhibits -- the Bureau's Exhibits 6, 7, and 8 are in the record for all purposes.

Now, second, there was to be a stipulation that counsel had been working on since, I guess, since late December, and I understand from an off-the-record discussion that that is -- or that, that type evidence is not, not quite ready. Am I correct in that?

MR. ZAUNER: Well, there are actually two pieces of evidence that we're talking about. One is a stipulation, and,

1 and that stipulation I believe we are now ready to offer. But
2 there was also a, a supplement statement of Richard Richards
3 and that is -- supplement statement is, is what we are still
4 discussing.

5 JUDGE SIPPLE: All right. What I would like to do
6 is, so we could move this, this proceeding along, is to get
7 the evidence in that's ready to come in, that is, the stipula-
8 tion. Would the Bureau be willing to sponsor that stipula-
9 tion? I think this basically was your, your issue, if I'm not
10 mistaken here. Right?

11 MR. ZAUNER: Yeah. Well, I, I think it would come
12 in from, from both of us. It's a stipulation -- both Parties
13 join in, in the stipulation. That's the nature of a stipu-
14 lation.

15 JUDGE SIPPLE: Right. I understand that. But, but
16 I do --

17 MR. ZAUNER: I --

18 JUDGE SIPPLE: It has to be marked as something.

19 MR. ZAUNER: Yes.

20 MR. McCARTIN: Your Honor, I have it labelled as
21 Joint Exhibit 1.

22 JUDGE SIPPLE: Fine.

23 MR. ZAUNER: Fine.

24 JUDGE SIPPLE: Fine.

25 MR. McCARTIN: Shall I identify it for the record

1 and --

2 JUDGE SIPPLE: Are you prepared to do that now at
3 this point? Have it -- let's have it identified. Let's have
4 the reporter mark it and let's move it in.

5 MR. SCHATTENFIELD: Yeah. I'd like to see the final
6 copy. I know we discussed it.

7 MR. MCCARTIN: Okay.

8 MR. SCHATTENFIELD: I think we, we were all --

9 (Pause.)

10 JUDGE SIPPLE: Okay. Let's, let's, let's keep this
11 -- let's -- for Mr. Schattenfield, let's, let's keep this on,
12 on, on the proper level here. Mr. McCartin, would you provide
13 the --

14 MR. MCCARTIN: Yes.

15 JUDGE SIPPLE: -- reporter with the appropriate
16 number of copies and, and you, in the meantime, identify it
17 for the record?

18 MR. MCCARTIN: Let the record reflect that I am
19 handing the reporter two copies of a document titled Joint
20 Exhibit 1, Stipulation. The exhibit is itself a one-page
21 document. I ask that it be marked for identification.

22 JUDGE SIPPLE: Okay. The reporter will so mark that
23 document for identification.

24 (Whereupon, the document referred to
25 as Joint Exhibit No. 1 was marked for

1 identification.)

2 MR. MCCARTIN: Your Honor, would you like a copy?

3 JUDGE SIPPLE: Please. If I may, yes.

4 MR. MCCARTIN: Let the record reflect that I'm also
5 handing a copy to Mr. Zauner.

6 MR. ZAUNER: Thank you.

7 MR. MCCARTIN: Your Honor, as previously discussed,
8 this exhibit is being offered into evidence as a joint exhibit
9 and so I hereby move it into evidence.

10 JUDGE SIPPLE: All right. And the purpose for this
11 evidence is -- can you just give a brief statement as to what
12 the purpose is in terms of relevancy?

13 MR. MCCARTIN: Your Honor, this was -- grew out of
14 the Bureau's desire to call a rebuttal witness after the
15 previous hearing session to address the amount of usable
16 marijuana that the plants grown by Mr. Richards would have
17 generated. And after discussions between the Bureau and us,
18 we have come up with this stipulation to avoid the need to
19 have the Bureau's expert testify, us cross-examine the expert,
20 and perhaps us also provide our own expert. So, it basically
21 was an effort to expedite the process.

22 JUDGE SIPPLE: All right. It, it seems -- having
23 seen it now for the first time, it seems to me that this is
24 evidence of a technical nature, which will tie in, however,
25 with proposed findings.

1 MR. McCARTIN: Yes, it will, Your Honor.

2 JUDGE SIPPLE: And it should assist me, as I see it
3 here.

4 MR. McCARTIN: Right.

5 MR. ZAUNER: Your Honor, may, may I just make a
6 statement concerning --

7 JUDGE SIPPLE: Yes.

8 MR. ZAUNER: -- this stipulation for the record?
9 The stipulation looks quite simple and, and straightforward,
10 but actually it was the product of, of a great deal of effort
11 on the part of Mr. Richards' attorneys and myself. And I
12 would just like the record to reflect that in reaching this
13 stipulation we considered a number of things. Among those was
14 testimony offered by a Dr. Elsohly, E L S O H L Y, from the
15 University of Mississippi's Research Institute of
16 Pharmaceutical Sciences, Health Sciences Research Division,
17 School of Pharmacy. We also considered in the -- in this --
18 reaching this stipulation a June 1992 Drug Enforcement
19 Administration study of cannabis yields. Also in reaching the
20 stipulation we considered the Federal sentencing guidelines
21 and certain statements contained therein as to the quantity of
22 marijuana, usable marijuana, that could be obtained from an
23 average plant. We also considered certain learned treatises
24 on the subject of marijuana growing in, in reaching this
25 determination.

1 So, the, the stipulation that we have reached is --
2 doesn't reflect all that went into it, but it was the result
3 of, of a great deal of effort, I think, on the part of both of
4 us to reach something that would be acceptable to both sides
5 in, in this proceeding.

6 JUDGE SIPPLE: Mr. McCartin?

7 MR. McCARTIN: Your Honor, one clarification. The
8 Dr. Elsohly to whom Mr. Zauner referred was not a consultant
9 to Mr. Richards. He was the sponsor of the DEA study that Mr.
10 Zauner referred to, and his testimony as evidence in tran-
11 scripts of other court proceedings which we obtained was used
12 as a basis for some of the information in the stipulation.
13 But as a technical matter, he was not a consultant to us and
14 didn't have any official relationship. And I, I state that
15 for, for the benefit of Dr. Elsohly. I think we would desire
16 that that be made clear.

17 JUDGE SIPPLE: All right. So, he didn't focus on
18 specific evidence in this case? But you feel that the evi-
19 dence that he has based opinions on is sufficiently comparable
20 to make his conclusions appropriate to here, at least in terms
21 of the preparation of the stipulation? Is that -- my under-
22 standing correct?

23 MR. ZAUNER: We, we utilized testimony that he had
24 provided in other court proceedings. We also utilized this
25 DEA study of which he was -- I'm not sure whether he was a

1 cosponsor or not, but which he certainly put his imprimatur on
2 in, in reaching the determination that we did as to the quan-
3 tities. The, the quantities stated in here and, and the facts
4 stated in here are, are specific to, to this proceeding. I,
5 I, I would not want to necessarily say that they would apply
6 to any, any other Government proceeding. This is the result
7 of, of a give and take between the Parties to, to reach a, a
8 mutually agreeable set of facts for the purposes of this
9 proceeding.

10 JUDGE SIPPLE: All right. But that's -- my concern
11 is reliability, and I, from what you have represented and what
12 Mr. McCartin is concurring in, I feel that this is reliable
13 for purposes of making findings in this case. I would ask,
14 however, in submitting proposed findings which involves this,
15 this evidence, this stipulation evidence if you would, at
16 least by way of footnote, repeat what you did -- what you
17 stated here today in terms of explaining the, the basis for
18 these conclusions. I mean, one footnote would be sufficient
19 so that I can cite to it. As well as this transcript.

20 Very well, then. The Joint Exhibit No. 1,
21 Stipulation, a one-page document, is received in evidence at
22 this time as the Joint Exhibit No. 1.

23 (Whereupon, the document marked for
24 identification as Joint Exhibit No. 1
25 was received into evidence.)

1 JUDGE SIPPLE: Now, there's a -- I want to stay on
2 track with what we can accomplish today. There are, I be-
3 lieve, Exhibits Nos. 2 through 27 which I am broadly charac-
4 terizing in the nature of sworn declarations attesting to Mr.
5 Richards's character in the community.

6 MR. SCHATTENFIELD: Before we get to that, there was
7 one other open matter, and I think Mr. Zauner's agreed to a
8 stipulation with respect to no outstanding -- no violations
9 reflected by the -- Mr. Richards' record in operating his low-
10 power television station.

11 COURT REPORTER: Excuse me. Could you share the
12 mike? I couldn't --

13 MR. SCHATTENFIELD: Well --

14 COURT REPORTER: You're on the record, sir. I'm
15 sorry.

16 MR. SCHATTENFIELD: Why, why don't you have Mr.
17 McCartin do it. It's right in front of him.

18 JUDGE SIPPLE: Well, you can share the microphone.
19 That's all right, Mr. Schattenfield. It's just a question of
20 so that the reporter is picking up what's being said.

21 MR. McCARTIN: All he said is another open matter is
22 the stipulation with regard to Mr. Richards' record with the
23 FCC concerning violations, and Mr. Zauner has recently agreed
24 that there are no such violations, that Mr. Richards' in his
25 operation of his low-power television station has a clean

1 record at the FCC and elsewhere -- no, not elsewhere. We
2 didn't, we didn't go that far. I'm sorry. It's the FCC
3 record which is clean and we, we know of no other violations
4 in any other place with regard to the stations. I guess
5 that's not the subject of the stipulation, why -- elsewhere.

6 JUDGE SIPPLE: All right. Well, where do we stand
7 on this then, Mr. Zauner? What is it that you're agreeing to
8 agree to?

9 MR. ZAUNER: Yes, Your Honor. I, I checked with the
10 Low Power Branch of the FCC to -- to determine whether there
11 had been any Complaints or anything else filed with regard to
12 Richard Richards, and they told me they were unaware of any.

13 JUDGE SIPPLE: That's -- that certainly is probative
14 of a conclusion that there have been no violations as far as
15 the FCC is concerned with respect to those stations. I'll
16 accept that stipulation.

17 MR. McCARTIN: Your Honor, before we move into the
18 other exhibits, one other cleanup matter that you had men-
19 tioned at the last hearing, which was the Statement of Proof
20 of Publication pursuant to the Commission's Rules. That has
21 been filed today, separately by pleading, and that should
22 close the -- close that issue.

23 JUDGE SIPPLE: It's being filed today by, by plead-
24 ing. Fine. Okay. Thank you for picking up on that, Mr.
25 McCartin.

1 MR. MCCARTIN: If I could also just correct your
2 statement that we had Exhibits R2 through 27. I believe we
3 also have Exhibits 28 and 29 which we intended to offer. And
4 Exhibit 27 was not of the type broadly characterized as, as,
5 as community witnesses. Instead -- I can introduce these as,
6 as we go along, but I just wanted to make the record clear
7 that there are two other exhibits that are not of the nature
8 you described.

9 JUDGE SIPPLE: All right. I, I was trying to give a
10 very broad definition, but let's -- I, I appreciate your
11 pointing that out and we'll have to just take these either one
12 at a time or in categories. How do you want to proceed on
13 these then, Mr. McCartin?

14 MR. MCCARTIN: Well, Your Honor, I, I think it
15 probably makes sense to deal first with the exhibits that are
16 statements of members of the community. And we have previous-
17 ly, the Bureau and, and us, exchanged copies of these exhib-
18 its. And, and the Bureau, I guess, can speak for itself, but
19 I, I believe it has satisfied itself that the -- that there's
20 no need for cross-examination, indeed have waived the right to
21 cross-examine these people, so that the exhibits can come in
22 without that necessity.

23 JUDGE SIPPLE: That's been my understanding. You
24 confirm that, Mr. Zauner?

25 MR. ZAUNER: Yes, Your Honor. I have contacted at

1 random a number of these witnesses and spoken to them on the
2 telephone. And in the course of my conversations, I've become
3 convinced that if they were called here to testify that they
4 would testify as stated in their statements. Now, I've only
5 sampled the group. I expect that that would be true of all of
6 them. So, I will not require them to be present for purposes
7 of cross-examination. I'm not waiving any other objections I
8 may have, but I am waiving the right to have a sponsoring
9 witness.

10 JUDGE SIPPLE: All right. I'm, I'm, I'm suffi-
11 ciently familiar with these, with these proposed exhibits to
12 agree that they -- cross-examination does not seem to be
13 necessary for considering -- for the reliability -- testing
14 the reliability of, of this evidence. So, it's just a ques-
15 tion, then, of relevance.

16 So, where can we start with, Mr. McCartin? I can
17 start with Exhibit 2 and -- do you -- does the -- do you have
18 copies for the reporter?

19 MR. McCARTIN: Yes, I do, Your Honor. We -- let me
20 identify for the record Richard Richards' Exhibit R2, which is
21 titled, "Statement of Raymond H. Atchinson," A T C H I N S O
22 N. It is a two-page document, and let the record reflect that
23 I'm handing the reporter the original executed version of this
24 and one copy.

25 JUDGE SIPPLE: Very well. The reporter will so mark

1 that, then, as Richard Richards Exhibit No. 2 for
2 identification.

3 (Whereupon, the document referred to
4 as Richard Richards Exhibit No. R2
5 was marked for identification.)

6 MR. McCARTIN: And I also, Your Honor, will hand you
7 a copy and the Bureau a copy of this exhibit.

8 JUDGE SIPPLE: Okay. Do you have any objection?

9 MR. ZAUNER: Yes, Your Honor, I do. First of all,
10 I'm going to object to, to this exhibit and to the other to
11 the extent that they include information relevant to the
12 meritorious nature of the station's programming. And in, in
13 this statement I would object to the, looking at the last full
14 paragraph, the first and second sentence of that paragraph.

15 MR. SCHATTENFIELD: Which -- I'm sorry. The --

16 MR. ZAUNER: That's --

17 MR. SCHATTENFIELD: -- last full paragraph --

18 MR. ZAUNER: The last --

19 MR. SCHATTENFIELD: -- starting on --

20 MR. ZAUNER: -- full one. It begins with, "As for
21 Channel 33..."

22 JUDGE SIPPLE: Mr. McCartin?

23 MR. McCARTIN: I -- Your Honor, I think the issue of
24 meritorious programming has been dealt with already in this
25 proceeding in your rulings. Consistent with your rulings at

1 the previous hearing session, we would not propose to offer
2 any statements in this exhibit is evidence of, of the merito-
3 rious programming of the station. It, it simply is one of a
4 group of facts that comprise the package that each of these
5 witnesses are testifying about concerning Mr. Richards' good
6 character, the fact that he has rehabilitated himself, and
7 that as part of that effort is providing a valued service to
8 the people in the community.

9 JUDGE SIPPLE: All right. I am going to -- I, I see
10 your point, Mr. Zauner. I'd say Mr. Zauner is technically
11 correct. But in light of the, the brevity of this statement,
12 in light of Mr. McCartin's expression of an understanding -- a
13 clear understanding of my earlier ruling, I would not expect
14 to see that evidence in proposed findings. And should it
15 creep in, the Bureau would be in the position to point out its
16 inappropriateness or nonrelevance. I'm going to -- and, and,
17 in addition to that, there is -- the paragraph really does
18 address two issues. Again, it's trying to express positive
19 things with respect to Mr. Richard -- Mr. Richards, and I
20 certainly can draw the distinction between that purpose and an
21 inappropriate purpose, which would be the programming, the
22 merits of the programming.

23 So, I'm going to overrule the objection and I'm
24 going to receive Exhibit 2 into evidence in -- at this time as
25 written, that is, the Statement of Raymond Atchinson.

1 (Whereupon, the document marked for
2 identification as Richard Richards
3 Exhibit No. R2 was received into
4 evidence.)

5 JUDGE SIPPLE: Mr. McCartin?

6 MR. McCARTIN: Your Honor, let the record reflect
7 that I am handing the reporter the original and one copy of a
8 document titled, "Richard Richards' Exhibit R3, Statement of
9 John R. Cantral." That's C A N T R A L. It is a two-page
10 document and I ask that it be marked for identification.

11 JUDGE SIPPLE: I will not need a copy since I have
12 the copies in advance right here. Thank you. The reporter
13 will mark this document as Richards Exhibit No. 3 for
14 identification.

15 (Whereupon, the document referred to
16 as Richard Richards Exhibit No. R3
17 was marked for identification.)

18 JUDGE SIPPLE: Mr. Zauner?

19 MR. ZAUNER: I -- Your Honor, I would object on the
20 same grounds, namely that the testimony goes to meritorious
21 programming. The portion of the exhibit beginning with, about
22 the middle of the first page, "My family and I view..." and
23 down to the end of the page.

24 JUDGE SIPPLE: Mr. McCartin, do you want to respond
25 to that?

1 MR. McCARTIN: Your Honor, I, I would respond the
2 same way I responded to the previous objection. We, we will
3 not rely on, on this material to support a point of meritori-
4 ous programming in mitigation; rather, this is part of the mix
5 of information that formed the basis for this witness and the
6 other witnesses' opinions about Mr. Richards character and
7 contribution to the community.

8 JUDGE SIPP: All right. Well, this -- the focus
9 on this is, is much clearer, to me anyway, comes through
10 clearer to me than the, the earlier statement. And in this
11 one, Mr. Zauner has the best of the argument. This is evi-
12 dence that's -- it's, it's clearly only going in one direc-
13 tion; that is the meritorious nature of the programming. So,
14 I am going to strike paragraphs -- I'm going to -- well,
15 paragraphs one and paragraphs two remain in, and I'm striking
16 paragraph three, four, and five. Paragraph three starting
17 with that phrase, "My family and I view Mr. Richards'
18 Station..." That is being stricken. And I'm leaving in the
19 entire second page.

20 Your next one? Oh. I'm sorry. Let me make the
21 ruling.

22 With -- except for the matters that I have ordered
23 stricken, Richards No. 3 for identification is now received in
24 evidence as Richards Exhibit 3.

25 (Whereupon, the document marked for

1 identification as Richard Richards
2 Exhibit No. R3 was received into
3 evidence.)

4 MR. McCARTIN: Let the record reflect that I'm
5 handing the reporter the original and one copy of the document
6 titled, "Richard Richards' Exhibit R4, Statement of Dwight
7 Collins." It is a two-page document and I ask that it be
8 marked for identification.

9 JUDGE SIPPLE: The reporter will so mark that
10 document as Richards Exhibit 4 for identification.

11 (Whereupon, the document referred to
12 as Richard Richards Exhibit No. R4
13 was marked for identification.)

14 MR. McCARTIN: And I hereby move it into evidence.

15 JUDGE SIPPLE: Mr. Zauner?

16 MR. ZAUNER: Yes, Your Honor. I would object to the
17 portion beginning in the second full paragraph, the second
18 sentence thereof, "I believe Mr. Richards is doing..." down to
19 the end of that paragraph. And I would also object to the
20 last four lines of the last paragraph on the page, beginning
21 with the words, "Christian broadcasting..." and ending with
22 the words, "...positive influences." on the last line on page
23 one. Also, on page two I would object to the -- well, let,
24 let me change that, Your Honor. I would go from "Christian
25 broadcasting is so important..." through page two to the end

1 of that paragraph, the last sentence of which, "I was ready to
2 take my life, but thank God TBN was there!"

3 JUDGE SIPPLE: All right. Mr. McCartin?

4 MR. ZAUNER: And, and --

5 JUDGE SIPPLE: I'm sorry.

6 MR. ZAUNER: One other.

7 JUDGE SIPPLE: Finish.

8 MR. ZAUNER: I would object to the first clause in
9 the next paragraph, "As a result of my finding God through
10 TBN"; and then also the following paragraph beginning with the
11 words, "I trust you will be able to see the value of..." to,
12 to the end of that paragraph, which is the letters, "TBN."

13 JUDGE SIPPLE: Well, I'm going to permit some
14 editorial freedom on this. I will grant your motion with
15 respect to that paragraph that begins, "Christian broadcasting
16 is so important..." down to that phrase, "but thank God TBN
17 was there!" on page two. So, that paragraph I'm going to
18 strike based on my earlier ruling. Everything else remains,
19 however. And subject to that, that language which has been
20 stricken, Exhibit 4 is now received in evidence.

21 (Whereupon, the document marked for
22 identification as Richard Richards
23 Exhibit No. R4 was received into
24 evidence.)

25 MR. MCCARTIN: Let the record reflect that I am

1 handing the reporter the original and one copy of the document
2 titled, "Richard Richards' Exhibit R5, Statement of Albert N.
3 Dubois." That's D U B O I S. It is a two-page document. I
4 ask that it be marked for identification.

5 JUDGE SIPPLE: The reporter will so mark that
6 document as Richards Exhibit 5 for identification.

7 (Whereupon, the document referred to
8 as Richard Richards Exhibit No. R5
9 was marked for identification.)

10 MR. MCCARTIN: Hereby move it into evidence.

11 JUDGE SIPPLE: Mr. Zauner?

12 MR. ZAUNER: Yes, Your Honor. I object to the
13 paragraph beginning with the words, "My wife and I...", and
14 that's a little over halfway down the first page, through the
15 end of the exhibit.

16 JUDGE SIPPLE: Well, I will permit -- again, I, I
17 could -- Mr. McCartin, I don't mean to cut you off on this,
18 but to be consistent with my earlier rulings I would strike
19 that one paragraph, "My wife and I are keen..." down to the
20 word, "degrading." But everything else remains as, again,
21 it's, it's -- the broader statements of editorial nature I'm
22 going to let -- allow to stay in.

23 MR. ZAUNER: Your Honor, could, could I just point
24 out that the last paragraph is -- seems to fall within the
25 category of -- it's going directly to the station rather than

1 to, to Mr. Richards' character.

2 JUDGE SIPPLE: I understand that, but it's just,
3 it's just, it's just one line and it's, it's, it's what the
4 witness would want to say. It's not relevant, I agree. Well,
5 it's kind of in that middle ground. Certainly technically
6 you're correct, Mr. Zauner, so I will strike it.

7 MR. MCCARTIN: Your Honor, and I, just, just for the
8 record, I, I --

9 JUDGE SIPPLE: Yes?

10 MR. MCCARTIN: -- I will not continue to respond to
11 Mr. Zauner's objections or at least your rulings on them,
12 accept that they're consistent with what you said before, but
13 I don't want my silence to be, silence to be construed as, as
14 acquiescence. I, just for the record, I -- to just speed
15 things along. If I have something to say about a particular
16 ruling, I'll pipe up.

17 JUDGE SIPPLE: I, I, I appreciate your telling me
18 that way. I, I assume you would if -- but that this is good
19 to have this clear on the record. I do want to -- I mean, do
20 you, do you really -- do you have a position that you can
21 state in terms of how you feel you're prejudiced by, by this
22 language being stricken? I'm trying to do it in such a way so
23 that the, the thrust of what the witness is saying with re-
24 spect to Mr. Richards' character stays with the case. These
25 are really technical --

1 MR. McCARTIN: Oh, I --

2 JUDGE SIPPLE: -- objections.

3 MR. McCARTIN: I, I believe that you're, as far as
4 the witness's statements as to Mr. Richards' character, that,
5 that, you know, your, your rulings are preserving the evidence
6 with respect to his character. So, I, I don't think there has
7 been so far any prejudice with respect to evidence concerning
8 his character.

9 JUDGE SIPPLE: All right. That's the -- that's,
10 that's when I really want to hear from you, when you feel that
11 I've stepped over the line.

12 MR. SCHATTENFIELD: If I could say something? I
13 know --

14 JUDGE SIPPLE: Sure, Mr. Schattenfield. Would you
15 -- go ahead.

16 MR. SCHATTENFIELD: I, I understand that these are
17 difficult decisions and -- but I think a person is what they,
18 what they do. It's not meritorious programming. Now, you
19 might disagree with what he does, but that's what he does.
20 And this man is saying how he accepts it. This tells who this
21 man is. We might like this man. We might dislike this man.
22 We're not going to say -- or, or we'll never argue that he
23 should get a renewal because he's broadcasting Christian
24 programming or Mohammed programming. But it happens he is
25 putting on TBN. It happens he is putting on Christian broad-

1 casting. And this is him. This is what he does. And, and
2 therefore it shows the man, not -- by no stretch of the imagi-
3 nation can I, can I fathom that we would write findings say-
4 ing: he has been providing a meritorious service to the
5 people of Sierra Vista, et cetera, because he puts on
6 Christian programming. But here's a person in the community,
7 and it runs throughout this thing, these, these various state-
8 ments, this is what he does and this is how the people look at
9 it. And I don't see how you can separate the man from what he
10 does. And I think it fleshes out the picture. You might like
11 that picture or not, but that's the man. Not, not the -- not
12 meritorious programming. This is him. And that's why I think
13 much of this should go in. But that's, that's my position.

14 JUDGE SIPPLE: Well, what I think I'm doing, my
15 rulings, I think, at least I'm trying to make them really
16 consistent with, with the, with the broad thrust of your
17 statement, Mr. Schattenfield, and it, it's not going to be
18 lost even by not considering what I've excluded thus far. It
19 is, it is not going to be lost as to who this person is in
20 terms of what he's trying to accomplish for that community in
21 the broadcasting nature of things. It's just that when these
22 paragraphs come down to the very specific things that really
23 are, are, are puffing his broadcasting, I'm just going to have
24 to go with it. I mean, Mr., Mr. Zauner is right. After all,
25 he's just technically correct, in my judgment.

1 All right. So, what I have stricken in No., in
2 No. 5 is the, the fourth paragraph in its entirety and the
3 sixth, which is the last paragraph on page two, in its entire-
4 ty. Okay. On -- now we have the -- so, that's received in
5 evidence subject to those strikings. 5 is now in evidence.

6 (Whereupon, the document marked for
7 identification as Richard Richards
8 Exhibit No. R5 was received into
9 evidence.)

10 JUDGE SIPPLE: Okay. Your next exhibit.

11 MR. McCARTIN: Let the record reflect that I am
12 handing the reporter an original and one copy of an exhibit
13 titled, "Richard Richards' Exhibit R6, Statement of Leona
14 Erber." It's a one-page document and I ask that it be marked
15 for identification.

16 JUDGE SIPPLE: The reporter will so mark that
17 document as Richards Exhibit 6 for identification.

18 (Whereupon, the document referred to
19 as Richard Richards Exhibit No. R6
20 was marked for identification.)

21 MR. McCARTIN: I hereby offer Exhibit R6 into
22 evidence.

23 JUDGE SIPPLE: Any objection?

24 MR. ZAUNER: Yes, Your Honor. In the third full
25 paragraph, the language beginning with the second sentence,